Arun Dev Upadhyaya v. Integrated Sales Service Ltd. & Anr.

Scope of review under Article 137 and Order XLVII Rule 1 CPC – "error apparent on the face of the record" – review of judgment enforcing a foreign arbitral award against a non-signatory.

Date of Order: July 5, 2023
Case Law No: GIB-SC-2023-15
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The review petitioner, a former director of DMC Management Consultants Ltd., sought review of the Court's judgment of 10.08.2021, which had dismissed his appeals and upheld enforcement in India of a foreign (AAA) arbitral award of US$ 6,948,100 under a Representation Agreement, holding DMC, GBTL and the petitioner (a non-signatory) jointly and severally liable. The petitioner contended that the Court overlooked that Section 46 (unlike Section 35) of the Arbitration Act binds only persons between whom the foreign award was made, that his objections to enforcement were not dealt with, that the tort claim was outside the arbitration, and that damages were unquantified. The issue was whether any error apparent on the face of the record existed to justify review.

Final Verdict

The Court dismissed the review petitions. It reiterated that review is confined to Order XLVII Rule 1 CPC; an error needing a long-drawn process of reasoning, or where two views are possible, is not apparent on the face of the record, and review cannot operate as an appeal in disguise. On examining the 2021 judgment, it found that every ground now urged – non-signatory binding, Section 48 objections, tort/arbitrability, Section 35 versus Section 46, public policy and quantification of damages – had already been considered and rejected. **Since each argument had been considered, accepting them would only mean expressing a different opinion, which does not fall within the settled contours of an error apparent on the face of the record, and no good ground for review exists.**

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